

ST 00-0050-GIL 03/10/2000 DELIVERY CHARGES

Whether delivery charges may be deducted when calculating Retailers' Occupation Tax liability depends not upon the separate billing of such delivery or freight charges but upon whether the charges are included in the selling prices of the property or are contracted for separately by purchasers and retailers. See 86 Ill. Adm. Code 130.415. (This is a GIL).

March 10, 2000

Dear Xxxxx:

This letter is in response to your letter dated January 15, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

The above is a mail order company selling health and other home products. The billing statement shows the cost of the merchandise, the shipping and handling charge, and the amount of sales tax. Each item is stated separately. However, a tax is charged on the shipping and handling which according to the Illinois Department of Revenue is not legal in Illinois.

In calling this to their attention, they stated Illinois has a tax on services, therefore they can tax on shipping and handling.

Please advise how to handle this. Must the tax charged on the shipping and handling be refunded? Also should the amount of tax on food be shown separately from the the tax on home products?

We are answering your letter under the understanding that you have purchased merchandise from a mail order seller. These types of sales are generally considered sales of tangible personal property subject to Retailers' Occupation Tax /Use Tax liability and not sales of service subject to Service Occupation Tax liability.

SHIPPING & HANDLING

Whether delivery charges may be deducted by retailers in calculating Retailers' Occupation Tax liability depends not upon the separate billing of such delivery or freight charges but upon whether the charges are included in the selling prices of the property or are contracted for separately by purchasers and retailers and are also reflective of the costs of shipping. See the enclosed copy of 86 Ill. Adm. Code 130.415. The best evidence that delivery charges were agreed to separately and apart from selling prices, are separate and distinct contracts for freight or shipping. Alternatively,

documentation in the records of sellers that purchasers had options of taking delivery of the property at sellers' locations, for the agreed purchase prices, or having delivery made by sellers for the agreed purchase prices plus ascertainable delivery charges, may suffice.

Mail order delivery charges are deemed to be agreed upon separately from the selling price of the tangible personal property being sold so long as the mail order form requires a separate charge for delivery and so long as the charges designated as freight or delivery or shipping and handling are actually reflective of the costs of such shipping, transportation or delivery. To the extent that such charges exceed the actual costs of freight, shipping or delivery, the excess charges are subject to tax. See subsection (d) of Section 130.415.

FOOD, DRUGS, MEDICINES AND MEDICAL APPLIANCES

For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.310, which is the Department's regulation for "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sale of food and drugs can be subject to either low (1%) or high (6.25%) State tax rates under the Retailers' Occupation Tax Act.

The regulation provides that food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), and prescription and non-prescription medicines, drugs, and various medical appliances are taxed at the State rate of 1% plus any applicable local taxes.

Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. See subsection (b)(1) of Section 130.310.

A medicine or drug is "any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities." See subsection (c)(1) Section 130.310.

A medical appliance is defined as an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See part (c) of Section 130.310. Products that directly substitute for a malfunctioning part of the body include artificial limbs, dental prostheses and orthodontic braces, crutches, and wheelchairs etc. Some other products specifically listed in the regulation as qualifying for the reduced rate are home glucose monitors, home blood glucose test strips and related supplies used to treat human diabetes. Medical devices that are used for diagnostic or treatment purposes do not qualify for the lower tax rate. See subsection (c) of Section 130.310.

Products that do not meet the appropriate definitions of food, drugs, medicines or medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes.

When items are purchased that are taxed at differing rates, the different amounts of tax should be shown separately on the customer's bill and receipt.

CLAIMS FOR CREDIT

Under Illinois sales tax laws, retailers are the only ones who can file claims for credit. Whether or not retailers refund the taxes paid and file claims for credit with the Department is a private matter between retailers and their customers. The Department has no authority to compel retailers to file claims for credit.

If retailers pay amounts of taxes under the Retailers' Occupation Tax Act that are not due, either as a result of a mistake of fact or an error of law, they may file claims for credit with the Department. No credit shall be given those retailers unless they show that they have borne the burden of the tax or have unconditionally repaid the amount of the tax to their customers from whom it was collected. See the enclosed copy of 86 Ill. Adm. Code 130.1501. Again, the Department has no authority to compel a retailer to file a claim for credit. Whether or not sellers refund the taxes paid and file claims for credit with the Department is a private matter between sellers and purchasers.

However, you may want to provide a copy of this letter to the retailer referenced in your letter if that retailer is unsure how to tax these types of sales.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.